

IN THE IOWA DISTRICT COURT FOR GUTHRIE COUNTY

KRAIG PAULSEN, in his official
capacity as the Director of Revenue
for the Iowa Department of Revenue,

Petitioner,

v.

BOARD OF REVIEW,
GUTHRIE COUNTY, IOWA,

ROY SARGENT, in his official
capacity as Chair and Member of
the Guthrie County Board of Review,

LAURA KEMBLE, in her official
capacity as Member of the
Guthrie County Board of Review,

STEVE BIRELINE, in his official
capacity as Member of the
Guthrie County Board of Review,

MARGARET TIERNAN, in her
official capacity as Member of the
Guthrie County Board of Review, and

PAULA VOLESKY, in her official
capacity as Member of the Guthrie
County Board of Review,

Respondents.

EQUITY NO. _____

**PETITION FOR
WRIT OF MANDAMUS**

COMES NOW, Kraig Paulsen, Director of the Iowa Department of Revenue, by
and through his attorneys, to state the following in support of this Petition for a Writ of
Mandamus:

Parties, Jurisdiction, and Venue

1. Kraig Paulsen is the Director of Revenue (Director) for the Iowa Department of Revenue (Department).
2. The General Assembly has vested the Director with the following powers and duties:
 - a. “To have and exercise general supervision of the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards in the performance of their official duties in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied on the property be made relatively just and uniform in substantial compliance with the law.” Iowa Code § 421.17(1).
 - b. “To supervise the activity of all assessors and boards of review in the state of Iowa; to cooperate with them in bringing about a uniform and legal assessment of property as prescribed by law.” Iowa Code § 421.17(2).
 - c. “To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.” Iowa Code § 421.17(4).
 - d. “To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers . . . for failure or neglect to comply with the provisions of statutes governing the return, assessment and taxation of property[.]” Iowa Code § 421.17(5).

e. “[T]o make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty.” Iowa Code § 421.17(5).

f. “To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.” Iowa Code § 421.17(6)(a).

g. “To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary[.]” Iowa Code § 421.17(10).

h. “To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.” Iowa Code § 421.17(11).

i. “[B]ring actions of mandamus or injunction or any other proper actions in the district court to compel the performance of any order made by the director or to require any board or any other officer or person to perform any duty required by this chapter.” Iowa Code § 421.20(1).

3. The Board of Review for Guthrie County, Iowa (Board) is authorized by Iowa Code section 441.31. The Board's members are Roy Sargent, Laura Kemble, Steve Bireline, Margaret Tiernan, and Paula Volesky (Members). The General Assembly has imposed the following duties on the Board and its Members:

a. "To equalize assessments by raising or lowering the individual assessments of real property . . . made by the assessor." Iowa Code § 441.35(1)(a).

b. To hear protests by "[a]ny property owner or aggrieved taxpayer who is dissatisfied with the owner's or the taxpayer's assessment[.]" Iowa Code § 441.37(1)(a).

c. To hear complaints on behalf of the public from "[a]ny officer of a county, city, township, drainage district, levee district, or school district interested or a taxpayer thereof . . . in respect to the assessment of any property in the township, drainage district, levee district, or city[.]" Iowa Code § 441.42(1).

d. "[T]o give to the director of revenue information in their possession relating to taxation when required by the director[.]" Iowa Code § 421.18.

e. "[T]o cooperate and aid the director's efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws." Iowa Code § 421.18.

f. To be subject to the supervision, direction, reporting requirements, and orders of the Director. Iowa Code §§ 421.17(1), (2), (4), (6)(a), and (10).

4. Jurisdiction and venue are proper with this Court under Iowa Code sections 421.20(1) and 661.4 because the Board and its Members perform their official duties in Guthrie County, Iowa.

Factual Background

5. In April of 2019, Senator Jake Chapman informed the Director of a complaint he received from a constituent concerning the valuation of a parcel located at 2262 250th Street, Guthrie Center.

6. The property is owned by Guthrie County Assessor Nikki C. Carrick (Assessor).

7. In Iowa, county assessors are required to assess all property in the assessor's county and to personally affix values to all property assessed by the assessor. Iowa Code §§ 441.17(2) and 441.18. The county assessors are required to "[s]ubmit on or before May 1 of each year completed assessment rolls to the board of review" that values "[a]ll property subject to taxation" at "its actual value." Iowa Code §§ 441.17(7) and 441.21(1)(a). The Assessor submitted a 2019 assessment for her property that valued her 2002-built dwelling at \$67.37 per square foot.

8. Based upon the complaint received from a member of the public, the Director, in accordance with his statutory duty under Iowa Code section 421.17(11), directed the Department to review the issues raised by the complaint.

9. The Department compared the valuation from the Assessor's 2019 assessment of her own property with the valuations from her 2019 assessments of six (6) similar properties.

10. The Department found that the Assessor's valuation of her own dwelling was substantially less than the valuation she made of similar properties owned by others. In one instance, the 2019 valuation of her own dwelling in terms of dollars per square foot was less than half of the valuation she used for another's similar dwelling when making her 2019 assessments of the property in Guthrie County. All six (6) similar properties had substantially higher per square foot dwelling valuations. For example, the Assessor used a dwelling valuation of \$102.68 per square foot for a 1978-built dwelling on the same street as her dwelling. A 2009-built dwelling was valued by the Assessor at \$93.41 per square foot while a 2015-built dwelling was valued at \$138.39 per square foot.

11. The Department's review of the Assessor's 2019 valuations of her own property and that of similar properties owned by others did not eliminate the appearance of potential inequity or impropriety.

12. On April 30, 2019, the Director conveyed the information concerning the public complaint and the Department's review of the complaint to Jack E. Lloyd, the Chairman of the Guthrie County Conference Board. **Exhibit A.**

13. On May 20, 2019, the Director received a response from Chairman Lloyd. Chairman Lloyd stated that it is only the Guthrie County Board of Review that can address a citizen's dissatisfaction with the Assessor's handling of an assessment. Chairman Lloyd further stated that "it is my opinion no further inquiry is warranted in this matter." **Exhibit B.**

14. The Director sent correspondence to Chairman Lloyd acknowledging his desire to have the matter handled formally with the Board of Review. **Exhibit C.**

15. On May 29, 2019, the Director issued an Order to the Board and its Members (Director's May 29 Order). **Exhibit D.**

16. At the time of the Director's May 29 Order, the Board and its Members were the only Guthrie County body with the authority and duty to review and/or adjust the Assessor's 2019 assessment of her property. Iowa Code §§ 441.28, 441.30, 441.33, 441.35, 441.36, 441.37, and 441.42.

17. The Director's May 29 Order required the Board and its Members to undertake four tasks by July 31, 2019:

- a. Obtain two independent appraisals of the Assessor's property by two disinterested appraisers who were unaffiliated with each other or the Guthrie County Assessor's Office;
- b. Make its final assessment decision, in accordance with Iowa Code chapter 441 and Iowa Administrative Code chapter 701-71, with regard to the Assessor's 2019 assessment of her own property;
- c. Report to the Director by providing the two independent appraisals obtained, the evidence received on the agricultural purposes for which the Assessor used her property, and all other evidence relied upon in support of its final assessment decision for 2019; and
- d. Convene as necessary to comply with the Director's May 29 Order.

18. On July 10, 2019, the Director received correspondence from the attorney for the Board and its Members informing the Director that “we will not be complying with this order.”

19. On July 31, 2019, the attorney for the Board and its Members confirmed to the Director’s attorneys that the Board and its Members were not complying with the Director’s May 29 Order.

**Request for Writ of Mandamus to the
Guthrie County Board and its Members**

20. Petitioner incorporates herein the allegations of paragraphs one through nineteen above.

21. “The action of mandamus is one brought to obtain an order commanding an inferior tribunal, board, corporation, or person to do or not do an act, the performance or omission of which the law enjoins as a duty resulting from an office, trust, or station.” Iowa Code § 661.1. “Where discretion is left to the inferior tribunal or person, the mandamus can only compel it to act, but cannot control such discretion.” Iowa Code § 661.2.

22. The Board and its Members are statutorily subject to the supervision, direction, reporting requirements, and orders of the Director under Iowa Code sections 421.17(1), (2), (4), (6)(a), and (10).

23. As public officers, each of the Board’s Members is required by Iowa Code section 421.18 to cooperate and aid the Director’s efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws.

24. As public officers, each of the Board's Members is required by Iowa Code section 421.18 to provide the Director with information in his or her possession relating to taxation when requested.

25. The Board and its Members have a statutory duty under Iowa Code section 441.35(1)(a) to equalize the assessments within Guthrie County by raising or lowering the individual assessments made by the Assessor.

26. In response to a public complaint that the Assessor may have violated the law for assessment and taxation of property, the Director had the Department conduct a review of the complaint and the matters to which it related, as required by Iowa Code sections 421.17(1), (2), (4), (6)(a), (10), and (11).

27. The Department concluded from its review that there was a basis for the complaint it received, and the Director issued his May 29 Order to the Board and its Members to require the Board and its Members to comply with their legal obligations under Iowa Code sections 421.17(1), (2), (4), (6)(a), and (10), 421.18, and 441.35(1)(a).

28. The Director's May 29 Order only requires the Board and its Members to perform their statutory duties. It does not seek to control any discretion the Board and its Members may have in exercising those duties.

29. Under the Director's May 29 Order, the Board and its Members can decide to raise, lower, or leave undisturbed the Assessor's 2019 assessment of her own property.

30. The Director's May 29 Order is a proper exercise of the Director's authority in carrying out his duty to ensure that Iowa's property tax system is just, uniform, fair, equitable, in substantial compliance with the law, and justly enforced.

31. Despite the duties imposed on the Board and its Members by statute and the Director's May 29 Order, the Board and its Members have refused to comply with their legal obligations.

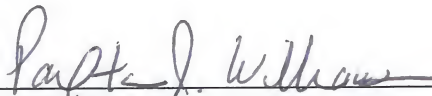
32. As a result of the refusal of the Board and its Members to perform their duties, the Director cannot ensure his compliance with the duties imposed upon him by statute.

33. As a result of the refusal of the Board and its Members to perform their duties, the public interest is harmed by the appearance of inequity and impropriety created by the Assessor's 2019 assessment of her own property at a dwelling valuation substantially lower than dwelling valuations she used for 2019 assessments of similar properties owned by others.

34. Only the Board and its Members performing their statutory duties by complying with the Director's May 29 Order will ensure a plain, speedy, and adequate remedy.

WHEREFORE, the Petitioner respectfully requests this Court to: (a) issue a writ of mandamus requiring the Guthrie County Board of Review and its members to perform their statutory duties under Iowa Code sections 421.17(1), (2), (4), (6)(a), and (10), 421.18, and 441.35(1)(a) by complying with the Director's May 29 Order; and (b) provide any further relief for the Petitioner that the Court deems just and proper.

Respectfully submitted,



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